



Pueblo de San Ildefonso
Office of the Governor

SI-GC16-108

May 31, 2016

Via Email to: kathryn.roberts@state.nm.us

Kathryn Roberts, Director
Resource Protection Division
NEW MEXICO ENVIRONMENT DEPARTMENT
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Re: Draft LANL Consent Order

Dear Ms. Roberts:

The Pueblo de San Ildefonso is a federally recognized tribe with a unique relationship with the Los Alamos National Laboratory (LANL) simply because of its proximity to the LANL facility and the cultural and traditional significance of the surrounding area. The Pueblo shares a common boundary and its ancestral homeland with LANL and has borne the brunt of many of LANL's past disposal activities that have contaminated the canyons surrounding LANL property and the hydrologic zones underlying LANL. As a result, the Pueblo de San Ildefonso has a vested interest in the cleanup requirements for LANL's legacy waste sites under the proposed March 30, 2016 Draft Consent Order (DCO). This is especially important because the DCO will be the only means of enforcement for the legacy waste cleanup outside of those areas covered under the Hazardous Waste Facility Permit. The Pueblo offers the following comments:

1. The Pueblo appreciates that you and New Mexico Environmental Department Secretary Flynn met with Pueblo representatives to discuss NMED's approach for the DCO. We had an open and frank discussion about NMED's proposed cleanup approach in light of limited funding and the Pueblo's concerns as an impacted community.
2. The Pueblo appreciates the DCO's action oriented approach with annual milestones which seems to be a more effective way to identify specific areas for cleanup activities based on priority importance and funding availability. This should allow for more targeted efforts to clean up the areas of highest risk and a better way to monitor DOE's compliance with the campaign milestones and to conduct enforcement for DOE's failure to complete those milestones. The Pueblo hopes that this will compel the use of DOE resources and funding for more actual cleanup work rather than administrative and legal activities.

3. Section VI. of the DCO refers to work already completed by DOE prior to the effective date of the DCO that meets the substantive requirements of the DCO will be deemed to comply with the DCO. The Pueblo would like to know what work has been completed to date and approved or accepted by NMED under the 2005 Consent Order.

4. Looking at Appendix B that lists the Milestones and Targets and Appendix C that lists the Campaigns expected to be performed by LANL, the Pueblo is very pleased to see the Chromium contamination as a corrective action campaign and that there are interim measures identified as a milestone to prevent further migration of the chromium plume beyond LANL's boundaries into San Ildefonso lands and groundwater. The chromium contamination matter is of grave concern to the Pueblo de San Ildefonso given the proximity of the plume to the LANL-Pueblo de San Ildefonso boundary line and the important traditional and cultural significance of the surrounding area.

5. Appendix B – Milestones and Targets should have headings to clearly show “milestones” which are enforceable deadlines and “targets” which are non-enforceable deadlines. The campaigns should have headings for the groups of projects or activities relating to that particular campaign rather than just the double lines between the different campaigns. In addition, the term “campaign” should be defined as a term even though there is a description of “campaigns” at VIII.A. of the DCO.

6. Under Section VIII.C, there is an annual planning process to update the Solid Waste Management Unit (SWMU) and Area of Concern (AOC) list, the campaign list, and milestone and task list. Part of that process will involve determination of whether DOE has completed the milestones for the year. While the Pueblo is not a party to the DCO, the Pueblo would like to receive information and be involved during the annual planning process on DOE's proposed changes to any of the Appendix lists based on actual work completed, changed conditions or changed funding levels and whether NMED accepts DOE's proposed revisions. This is because the Pueblo could be directly impacted by the corrective action activities to be undertaken during a particular time period under the DCO and whether the milestones have been met, as well as whether the NMED accepts DOE's revisions, particularly to milestone timeframes or the type of corrective actions. Similarly, the Pueblo would like input in the sequencing of the campaigns that appears to be done as part of the annual planning process.

7. Section IX.D. discusses NMED's soil screening levels (SSLs) which are based on “conservative exposure assumptions for several exposure scenarios (e.g., residential, industrial, and construction worker)” and then also “accepts DOE's recreational SSLs.” How is the SSL determined for a particular cleanup site? Is it based on the amount of anticipated human

exposure for that particular site after the cleanup activity? The Pueblo has a concern about a SSL being determined for a particular area on the LANL property based on anticipated exposure on the LANL side of the boundary when the anticipated human exposure on the Pueblo side of the boundary may be different. For example, the SSL for a site on LANL may be different because of how the LANL site is used and there may be little to no human exposure because few people would be in that LANL restricted area. However, just on the other side of the fence, the Pueblo may use a particular area for traditional or cultural uses and have a higher exposure. Would such a scenario be taken into consideration when establishing a particular SSL for a site that borders or is close to the Pueblo?

8. Section IX.G. states that “groundwater cleanup levels to be based on the maximum beneficial use of the groundwater to ensure the protection of human health. For protection of human health and the environment, groundwater cleanup levels shall be based on existing standards (e.g. drinking water standards) when they are available and when using them is protective of current and reasonably expected exposures.” What contingencies are in place to address the possibility of the promulgation of Tribal Water Quality Standards by the Pueblo? The Pueblo has been working toward this goal for several years, and now the U.S. Environmental Protection Agency (EPA) is preparing for tribal consultation on an Advance Notice of Proposed Rulemaking to establish baseline water quality standards on Indian reservations currently lacking water quality standards. EPA’s time frame is June to August 2016. Under either path, Tribal Water Quality Standards could have a profound effect on the work outlined in the DCO. Please describe how NMED will respond to this possible development, particularly as it relates to the Groundwater Monitoring provisions in Section XII.

9. In Section III. Definitions, “Groundwater” is defined as “interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.” Later, in Section IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW, the statement is made that “Contaminants have been detected beneath the Facility in all four groundwater zones.” The DCO should clarify that all four groundwater areas do in fact supply water “in sufficient amounts to be utilized as a water supply.” If this is correct, it should be stated explicitly. The Pueblo must point out that there are several downgradient wells and springs on Pueblo land that could be impacted due to the hydraulic nature of the groundwater on the Plateau and should also be considered when addressing the groundwater contamination activities because of future development and continued traditional use by the Pueblo.

10. Under Section IX.M, DOE can seek to vary a cleanup objective on the basis that it is impractical. DOE can base such impracticality of a cleanup project on such things such as technical difficulty, physical impracticality, effectiveness of the proposed solutions, project cost, hazards to workers or the public, and any other basis to support a finding of impracticality. The

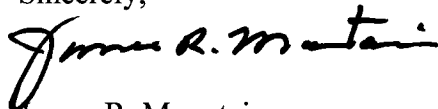
Pueblo requests notice if DOE submits a claim of impracticality for cleanup of a SWMU or AOC that will affect the Pueblo. We also request notice if NMED approves a DOE impracticality demonstration.

11. The DCO at XV.E, provides a process for notification and implementation emergency interim measures necessary to address an immediate threat of harm to human health or the environment. How will the Pueblo and the public be notified of such an emergency situation?

12. The Pueblo supports the use of stipulated damages if annual milestones are not met as a way to keep the emphasis on continued, timely and actual cleanup activities. The Pueblo has a serious concern about payment of stipulated penalties as described in Section XXXV.A.6). Under that provision, stipulated payments are to be paid to the State and we assume that those funds will go to the State's general fund as there are no provisions that such funds will be turned back to NMED for use on working on a cleanup project identified in the DCO or used by NMED for the benefit of communities impacted by the LANL legacy wastes. The Pueblo strongly urges that any funds generated by stipulated penalties under the DCO be used by NMED to invest in environmentally beneficial projects in the impacted communities. The Pueblo is clearly an impacted community, if not the most impacted community, but yet is often overlooked when the State collects fines or penalties for permit or other violations by LANL and uses those funds elsewhere. In other words, the Pueblo can be impacted by the violation that generated the fines for the State but the Pueblo does not see any benefit from those fines. The Pueblo urges language be inserted into the DCO to allow funds from stipulated penalties to be retained by NMED and used for environmental projects either in the impacted community or that will directly benefit that community.

On behalf of the Pueblo de San Ildefonso, I thank you for the opportunity to submit these comments to the Draft Consent Order and look forward to working with the New Mexico Environment Department to address cleanup activities on the LANL property. Please contact Raymond Martinez, Department of Environmental and Cultural Preservation Director, at (505) 455-2273, Ext. 127, should you have any questions regarding our comments.

Sincerely,



James R. Mountain
GOVERNOR
Pueblo de San Ildefonso